

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

JUDGMENT

State of Rajasthan vs. Champa Lal & Anr.

D.B.Cri. Appeal No.383/1988

Under Section 374 (2) Cr.P.C.
against the judgment dated 03.02.88 passed
by the Sessions Judge, Merta , in
Sessions Case No.26/1984.

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Date of Judgment:

11th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.JPS.Choudhary, Public Prosecutor.
Mr.Sandeep Mehta for the respondents

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by the State of Rajasthan being aggrieved by the decision of the court of Sessions Judge, Merta in Sessions Case No.26/1984 dated 03rd February, 1988 by virtue of which the accused respondents were acquitted of the charges levelled against them.

The prosecution was initiated on the basis of a first information report lodged by constable Badri Narain at 12.15 AM on 11.03.84 at Police Station Kuchaman City . In the report Ex.P/1 it was stated by the complainant that the complainant and other two constables, Ram Prasad and Rewant Singh were posted outside the house of Kamlia who earlier in the evening, had caused injuries to two constables namely Jagish Prasad and Sarwar Khan.

While the first informant, along with his colleagues, was patrolling outside the house of Kamlia, they saw two persons coming out of the house. One of them was wearing a pant with slaty colour and the other one was wearing a pant with pigeon colour. They asked both of them to stop for interrogation but both of them started running. While they were running, the person wearing the pant with slaty colour, threw something on them which hit Rewant Singh on the left thigh and there was an explosion with that. Rewant Singh fired in defence. Rewant Singh cried that he has been killed. His colleague, Ram Prasad also made a fire which hit the person wearing slaty pant. There was also a third person who ran away. Rewant Singh has been hurt badly and he was lying on the spot and there was no chance of his survival.

On the basis of the aforesaid information, the first information report was lodged and investigation commenced. After conclusion of the investigation, charge sheet was filed . Charges against accused Gajadhar under sections 302/34, 307/34 and 353 IPC and against Champalal under Sections 302, 307 and 353 were framed. The accused denied the charges and claimed trial.

At the trial , the prosecution examined 7 witnesses. The accused were examined under section 313 Cr.P.C. No defence was produced by them.

The trial court, after considering the case of both the parties held that constable Rewant Singh who was injured in the incident died due to the injuries sustained by him. The trial court considered the testimony of PW/1 Bardri Narain and that of PW/2 Ram Prasad. Discussing the evidence of PW/1 Badri Narain, the trial court found that according to this witness the two persons who came out of the house of Kamlia were not identified by them because of the darkness. However, he identified the colour of their pants. He failed to notice as to what was the colour of their shirts. The trial court has noticed that this witnesses has admitted that before the explosion occurred, they had not seen the object from which the

explosion occurred. From which direction the explosive was thrown , he was not in a position to say. This witness has been noticed to have said, because of darkness, it was not possible to judge from which direction the object was thrown. They could not see the explosive when it was thrown because it was dark.

Thus, the trial court came to the conclusion that it was rather impossible to judge that this witness had seen the person wearing the slaty pant throwing the explosive. It was also difficult to have identified the person at the time when object was thrown. The names of the persons were disclosed when they were apprehended. Thus, the witness could know the name of the accused persons after arrest. According to this witness, a third person , after explosion, had entered into the house of Kamlia. Who was that person, this witness was not in a position to inform the court. This witness admits that he had seen from a distance of 15- 20 yards that three persons had come out of the house. One of them entered into the house after explosion. This witness further admits that it is correct to state that all the three persons, two accused and one who came out of the house of Kamlia, were together at the door, when explosion occurred. After the explosion only two person were seen standing at the door, one had already gone inside and the accused could not be identified because

of the darkness.

This witness further admits that it is not possible to say with certainty as to which accused was ahead of another, and this is also correct, according to this witness, that they had known only after the explosion that something has been thrown. Thus the trial court has found that they had not known as to anything has been thrown by anybody before the explosion.

Thus, after discussing the evidence of PW/1 Badri Nrain the trial court was of the opinion that this witness hardly supports the prosecution case. Then the trial court has discussed the evidence of PW/2 Ram Prasad. PW/2 Ram Prasad in his testimony has stated that it was only after the explosion that he and the other witness had known that something has been thrown at them. Prior to that they had not known that anything has been thrown at them. While he informed the C.O. he had not identified that the explosive was thrown by the person wearing slaty pant. Had he known, he would have definitely informed that the person who threw the explosive was wearing a slaty pant. Therefore, the trial court was of the opinion that it was not possible for the witnesses to have seen as to who had thrown the explosive.

It is also stated that by observing the colour of the pant the identity of the accused cannot be pinpointed. As regards the light at the scene of occurrence, it has been observed by the trial court that no bulb was shown to be in existence at the scene of occurrence because such bulb has not been mentioned either in the first information report or in the Naksa Muvayna. The trial court has further noticed a variance in the testimony of PW/1 Badri Narain and PW/2 Ram Prasad. PW/2 Ram Prasad says that three persons came out of the house whereas PW/1 Badri Narain says that two persons came out of the house. According to PW/2 Ram Prasad two persons went ahead and one remained behind. PW/1 Badri Narain has further stated that he is unable to identify the person who ran away. The trial court has thus further considered the site memo wherein discrepancy in site memo has also been noticed.

Then the recovery of pant has been noticed and it has been observed by the trial court that it cannot be said with definiteness that the pant was of Champalal which is said to have been recovered. The trial court has also adverted on the circumstance that in the background where it is not known as to who had thrown the explosive fastening the liability on the other person

with the aid of Section 34 IPC is not possible because then there has to be some evidence to establish that there was a communality of thoughts. No evidence is available on record to conclude this aspect of the matter because the prosecution witnesses were not in a position to state whether they ever heard or noticed these accused persons either conversing or sharing their thoughts. Merely because they were together, the liability of the crime cannot be fastened with the aid of Section 34 IPC.

Thus, the trial court held that the implication of the accused persons with the aid of Section 34 IPC cannot be made out. If Section 34 IPC is applied then there being no definite conclusion as to who actually threw the explosive, conviction cannot be recorded and in that background the trial court acquitted the accused persons.

Being aggrieved by the findings of the trial court, the State has filed the appeal and has urged before us that it was a case where a person in uniform has been assaulted by the criminals and acquittal in this case would give a wrong message. There was evidence on record that these accused persons came out of the house of Kamalia. One of them has sustained injuries by gun shot which was fired by the constable on duty. Their complicity in the crime

stands established. Further the accused had come out together and at that time when they were accosted, the explosive was thrown by the accused on the police personnels and thus offence with the aid of Section 34 IPC is being made out.

Per contra, the learned counsel for the accused , submitted that the approach of the trial court in discarding the testimony of the witnesses is perfectly justified. The trial court has critically examined the evidence of both the eye witnesses. The question of identity goes a long way. According to the prosecution case there were three accused persons and out of these three accused persons one have not even been charge sheeted because his identity could not be fixed. May be he was the person who threw the explosive because there being no light in the scene of occurrence, the actual culprit was not known to the investigating agency and therefore, Section 34 IPC was invoked. But communality of thought having not been established, implication of Section 34 IPC is not possible and in that background when there was no light identity was not possible to be established and the findings of the trial court in this regard is thus perfectly justified and the conclusions arrived at cannot be interfered with.

We have heard the learned counsel and have given our thoughtful consideration and looked into the record of the case.

The treatment given by the trial court to the testimony of PW/1 Badri Narain and PW/2 Ram Prasad clearly establish the presence of more than two accused persons in the scene of occurrence. When there were more than two accused persons then the presence of unidentified accused person assumes importance because witnesses have not been able to say with certainty, as to who actually threw the explosive substance. When the person throwing the explosive could not be identified with certainty then there is always a chance whereby it can be said that it was the third person who has not been brought to book, who was responsible for throwing the explosive. It is not the prosecution case that the present two accused persons shared common intention, with the third unidentified accused. He has not even been referred at the trial. That being the position, the implication of the accused persons with the aid of Section 34 IPC is a very difficult proposition.

None of the two accused persons were identified by PW/1 Badri Narain and PW/2 Ram Prasad. Their identification was at best made according to the colour of the cloth of their pants.

When there was no light it would be a very difficult proposition to assume that the accused could be identified by the witnesses in the dark with the shades of the clothes which they were wearing. Pigeon and slaty colour easily get intermixed in darkness and may give a very different feeling when looked into without light. In that background , the findings arrived at by the trial court cannot be said to be perverse or against law. The findings are based on support from the material on record and in that background the approach of the trial court cannot be found fault with.

In the aforesaid circumstances, it is difficult for us to disbelieve the findings of the trial court and not to approve them.

Consequently, we find that the appeal of the State is merit-less and hence deserves to be dismissed, and is consequently dismissed.

(MUNISHWAR NATH BHANDARI), J.

(BHAGWATI PRASAD), J.